(2)

No. 88-1474

IN THE

Supreme Court of the United States

October Term, 1988

UNITED STATES OF AMERICA,
Petitioner,

vs.

THE GOODYEAR TIRE & RUBBER COMPANY AND AFFILIATES,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether, in determining the source of a dividend paid out of a foreign subsidiary's profit previously taxed by a foreign country, the term "accumulated profits," for the purpose of the foreign tax credit provision of section 902 of the Internal Revenue Code,* refers to the amount of the gains, profits or income of the foreign subsidiary on or with respect to which the foreign tax was imposed, or refers to the amount of the income on which U.S. income tax would have been imposed if the foreign subsidiary had been subject to U.S. income tax.

The Respondent has restated the question to make it plain that the question presented involves associating the profit which is the source of the dividend with the foreign tax imposed on that profit for which the credit is claimed.

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* Unless otherwise noted, citations to the Internal Revenue Code and "section" references herein are to the Internal Revenue Code of 1954 as in effect in 1970 and 1971 or to the sections thereof, as the case may be.

RULE 28.1 LIST OF AFFILIATES

The Goodyear Tire & Rubber Company has no affiliates other than wholly owned subsidiaries and the following:

Foreign Subsidiaries in Which the Parent Owns the Majority and the Minority Is Publicly Traded

Goodyear Canada Inc

Goodyear India Ltd

Goodyear Jamaica Ltd

Goodyear Thailand Ltd

PT Goodyear Indonesia

Gran Industria de Neumaticos
Centroamericana SA

Foreign Subsidiaries in Which the Parent Owns the Majority and the Minority Is Privately Held

Goodyear Lastikleri TAS

Goodyear Malaysia Berhael

Goodyear Maroc SA

Goodyear Taiwan Ltd

The Goodyear Tire & Rubber Company
of the Philippines Ltd

Second and Third Tier Foreign Subsidiaries Which Are Owned through Foreign Subsidiaries

These include a great many small corporations, principally tire stores and chains of tire stores in which the balance of the stock is generally privately held.

Domestic Subsidiaries

Brad Ragan, Inc.: part of the minority interest is traded on the American Stock Exchange, 74.6% owned by parent

Hayes Construction Tire Service Inc: 51% owned by Brad Ragan Inc, the balance privately held

Domestic Corporations Less Than 50% Owned and Balance Is Privately Held

Sam's Tire

Waste Recovery, Inc

IGEN, Inc

Partnership and Joint Venture Participation by Parent

Renaissance Center, Detroit: 1.27%

Sixth Floor Associates: 25%

F & M Co Limited Partnership: 22.5%

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RESPONDENT'S BRIEF IN OPPOSITION

The Respondent, The Goodyear Tire & Rubber Company and Affiliates, respectfully requests that this Court deny the Petition for a Writ of Certiorari seeking review of the opinion of the United States Court of Appeals for the Federal Circuit in this case. The opinion of the Federal Circuit is reported at 856 F.2d 170. The opinion of the United States Claims Court is reported at 14 Cl. Ct. 23. The opinions are reproduced in Appendices A and B to the Petition, and they have not been reproduced again in this Brief in Opposition.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

This case involves sections 902, 904(a) and 905(c) of the Internal Revenue Code of 1954 (26 U.S.C. §§902, 904(a) and 905(c)) and section 1.902-3(c)(1) and (4) of the Treasury Regulations (26 C.F.R. §1.902-3(c)(1) and (4) (1965)), as in effect for 1970 and 1971. Sections 904(a) and 905(c) of the Internal Revenue Code of 1954 and section 1.902-3(c)(4) of the Treasury Regulations are set forth below in pertinent part in an appendix. Resp. App., *infra* pp. A1-A4. The remaining statutory and regulatory provisions are set forth in Appendix F to the Petition. Pet. App. at pp. 32a-35a.

STATEMENT OF THE CASE

All of the facts in this case were included in a stipulation with numerous exhibits. Two of the exhibits have been attached as an appendix to this Brief in Opposition because they set out in schedules the opposing calculations of the foreign tax credit by the parties, and may therefore be of assistance to this Court in understanding the unusual and complicated problem presented here. Resp. App., *infra* pp. A5 & A7.

The Respondent does not disagree with the basic facts presented in Petitioner's Statement. It does take issue with the analysis and conclusions contained in the Statement in a number of respects, particularly the following:

1. The formula on page 3 of the Petition is not the formula for the foreign tax credit but rather the formula for the "foreign tax deemed paid." The actual foreign tax credit is derived by use of this formula after applying the "sourcing" principles discussed below and then applying the limitations on the credit contained in section 904. The difference is critical to the resolution of the issue in the instant case.

2. The Petition glosses over one of the most important aspects of this case. This case involves the principle of "sourcing" of dividends among several years. Petitioner relegates this entire subject to a footnote (Pet. at p. 4 n.3), but it must be explained if this case is to be understood.

At first thought it might be supposed that the formula set out on page 3 of the Petition is to be applied by inserting as P the entire undistributed surplus of the foreign corporation, and inserting as T all the foreign taxes ever paid by that corporation not previously

recovered as credits. But in *General Foods Corp. v. Commissioner,* 4 T.C. 209 (1944), *acq.* 1946 C.B. 2, the Tax Court held (and this is now well-settled) that the dividend is to be allocated among the years in which the foreign corporation earned the profit out of which that dividend was paid, and the "tax deemed paid" (TD/P) is to be computed separately for each such year, P being the after-tax profit of a given year, T being the foreign tax on the year's profit, and D being the dividend paid *out of* that year's profit whether or not paid *in* that year. The court said:

> To properly give effect to the language of the [statute], it is necessary to relate the tax credit to the particular year or years in which the accumulated profits (from which the dividends were paid) were earned and taxed. 4 T.C. at 216.

It necessarily follows that if the total dividend exceeds the "accumulated profits" after tax of the current year, then the excess part of the dividend is deemed paid out of the "accumulated profits" after tax of the preceding year. In such a case the tax "with respect to the accumulated profits," in the words of section 902, includes the tax paid on that part of the dividend that is attributable to the profit of the preceding year. This is the principle known as "sourcing" the dividend to several years.

The concept of "sourcing" in effect requires segregating the foreign subsidiary's profit—its "accumulated profits" before tax—by years. It is as if each year's profit is put in one of a row of pigeonholes in an old-fashioned desk. The corresponding foreign tax is allocated to the corresponding one of a parallel row of annual tax pigeonholes. To find the numbers for the formula in section 902, the dividend is first assigned to the pigeonhole for the year in which it was paid. Section

902(c)(1). If there is enough profit there to cover the dividend, we simply determine the fraction D/P by dividing the dividend by the profit. This fraction is multiplied by the tax in the corresponding pigeonhole for the same year to determine the "tax deemed paid."

If, on the other hand, the total dividend paid exhausts the profit for the year to which it was initially assigned, the rest of the dividend takes some of the profit from the pigeonhole for the next preceding year. The "tax deemed paid" will be calculated by application of the formula to each year separately. The amounts so calculated are then added, and the aggregate is subjected to the limitations of section 904 to determine the foreign tax credit. Thus, the "tax deemed paid" will be all of the tax corresponding to the first pigeonhole and part of the tax proportionate to any profit allocated to a pigeonhole for a previous year.

In applying the formula for each year, T, the tax for the year, is the amount of tax actually imposed for that year by the foreign government; the United States is not at liberty to move T to another year or change its amount. The determination of D for each year depends on the "accumulated profits" for that year, since the dividend is allocated according to the profits available for paying it. It is essential therefore to determine the "accumulated profits" for each year so as to match it with the tax actually paid for that year, as required by the Internal Revenue Code. If the "accumulated profit" is not correctly matched with the tax, we can have a year when there appears to be profit but no foreign tax and another where there appears to be foreign tax but no profit.

It is most important to recognize that the identification of "accumulated profit" that is disputed here relates to the profit of the foreign corporation that

must be allocated to appropriate pigeonholes to pair it with the foreign tax appropriate to it. It does not relate to the U.S. income of the U.S. parent. This point bears on the Petitioner's statement that certain deductions permitted by British tax law "are not allowed in computing income under the Internal Revenue Code." Pet. at p. 5. Whether they would be allowed in computing U.S. taxable income of a U.S. taxpayer is not at issue here. The issue here is whether they were allowable in computing the income of a British corporation in determining the "source" of a dividend. The foreign corporation is not subject to the U.S. Internal Revenue Code.

This entire case turns, then, on a point not made clear in the Petition, which is how the "accumulated profits" after tax shall be allocated among the years. The Respondent asserts that the Internal Revenue Code requires that we leave that profit in the year where the foreign government found it and taxed it. If we move it to a different year—a different pigeonhole—it will no longer be paired with the corresponding tax. The Respondent therefore contends that the determination of "accumulated profits" for this purpose must be made in accordance with British law. The Petitioner contends that the allocation should be made as if the subsidiary were a U.S. taxpayer, recomputing the British income according to U.S. tax law.

Another way of phrasing this issue is to contrast two terms: "earnings and profits" and "accumulated profits."

"Earnings and profits" is a term used frequently in the Internal Revenue Code, but always in connection with determining the income of a corporation subject to U.S. tax. It may be used in an aggregate sense, rather like "undistributed surplus," or occasionally to refer to the undistributed earnings of a single year.

"Accumulated profits," on the other hand, is used in the Internal Revenue Code only for the purposes of the formula set out in section 902; and it is used only with reference to "sourcing" the profits of a foreign corporation. And despite its name, it does not represent an aggregate, but relates to a single year only.

Another term that is used in section 902 is "gains, profits and income," which, as even the Claims Court recognized (Pet. App. at pp. 25a-26a), refers to the foreign computation of income on which the foreign tax was imposed.

In terms of these contrasting concepts, the question here is whether they mean the same thing: does "accumulated profits" equal "earnings and profits" or does it equal "gains, profit and income" (the foreign income)?

The question, then, is whether "accumulated profits" relates to the subsidiary's "gains, profits and income" on which the foreign tax was imposed, or on what would have been the subsidiary's income if it had been a U.S. taxpayer.

It can be shown that whenever in the "tax deemed paid" computation "accumulated profits" departs from the foreign computation of income, distortion of the credit results, one way or the other. The Tax Court saw this in *Champion International Corp. v. Commissioner,* 81 T.C. 424 (1983); the Court of Appeals saw it here.

3. Section 3 of the Petitioner's Statement purports to be a summary of the opinion of the Claims Court but really is part of an argument by the Petitioner on the merits. It does not seem appropriate here to discuss the opinion of the Claims Court, which seems in any event to have mistaken the stipulated facts, but some reference to it will be made below. *See infra* pp. 14-16.

REASONS FOR DENYING THE PETITION

1. No conflict between courts of appeals for different circuits exists, and the Petitioner does not even argue the contrary. In fact only two other cases have arisen which were clearly in point. The first was *Pacific Gamble Robinson Co. v. United States*, 62-1 U.S.T.C. ¶9160 (W.D. Wash. 1961), an unpublished District Court opinion supporting the Petitioner's position. In the second, the Tax Court in *Champion International* decided the same issue in favor of Respondent's position and expressly refused to follow *Pacific Gamble Robinson*. 81 T.C. at 443-44 n.29. The Petitioner has not relied on *Pacific Gamble Robinson* here or below. It is mentioned here in the interest of candor, but it does not appear to be good authority today. Moreover, the Commissioner did not choose to appeal the *Champion International* case and initially announced his acquiescence in it. 1984-2 C.B. 1. He partially withdrew his acquiescence only while this case was pending. Rev. Rul. 87-72, 1987-2 C.B. 170.

2. The Court of Appeals in the present case has not "decided an important question of federal law which has not been, but should be, settled by this Court."

A. The portion of the Internal Revenue Code which gave rise to the present controversy was repealed three years ago. To compute the foreign tax credit under the Tax Reform Act of 1986, the previously undistributed income earned after 1986 is pooled, and all post-1986 taxes not already recovered as credits are also pooled (the position taken unsuccessfully by the taxpayer in the *General Foods* case). Thus it will no longer matter whether profits of past years are attributed to one year or another, and it will not be necessary to pair foreign profits earned after 1986 with the right foreign tax by

"sourcing." Accordingly, the term "accumulated profits" will no longer be used in referring to income subjected to post-1986 foreign taxes.

In view of this change in the law it is very hard to imagine that this issue can be very important in the future.

B. There is no reason to suppose that enormous amounts of money are at stake. There is nothing whatever in the record to show what amounts, if any, may be involved. Even if claims for the amounts now asserted by the Petitioner have been filed, who can say whether they were correctly computed by those who filed them? This argument should await the arrival of reality.

Measuring "gains, profits or income" of the foreign corporation by its own tax law instead of the law of its shareholders ought, in the nature of things, to produce as many increases in the U.S. revenue as decreases. And the application of the limits on credits under section 904 should reduce the loss to the Treasury while leaving the gains undiminished.

C. Compliance with the decision below will not unduly burden the Internal Revenue Service administratively. On the contrary, if the foreign corporation has settled its tax liability to the foreign government, the final determination of the amount of income subjected to tax under foreign law should make the determination of the credit a mere matter of computation under section 902.

Section 905(c) seems to confirm this conclusion. Under that section if the foreign government adjusts its tax, the U.S. shareholder reports the adjustment and the

credit is recomputed. Any increase in U.S. tax liability is then "assessed." Notwithstanding the statement on page 5 of the Petition, the Commissioner did not assert "deficiencies in respondent's income tax." To assert a deficiency would invoke administrative procedures under the Internal Revenue Code, culminating in a "Notice of Deficiency" and the option of filing a petition in the Tax Court. Respondent did not have that option under section 905(c); the tax was simply assessed, requiring Respondent to pay it, claim a refund, and sue in a District Court or the Claims Court. The reason for the difference in procedure is obvious: the essential facts are settled in the foreign proceeding, and the U.S. foreign tax credit is merely "recomputed," a simple perfunctory procedure.

On the other hand, if the income of each foreign corporation having U.S. shareholders entitled to a foreign tax credit is to be redetermined on U.S. principles, the Commissioner will have to audit every one of those foreign corporations. If disputes arise on audit, how will they be resolved? Will the foreign corporation send representatives to the United States to litigate its income under U.S. law? What court will have jurisdiction? Or will each 10% shareholder claiming a credit file his own case? Congress will have to enact new procedures to settle these questions.

The only simple solution is to let U.S. law govern the income of U.S. taxpayers, but to let foreign income of foreign corporations be "sourced" under the same law that imposed the foreign taxes on it. This does not require U.S. agents to conduct audits under foreign law. On the contrary, the Internal Revenue Service merely follows the foreign country's determination of what foreign tax was imposed on what year's income.

D. The decision below does not overturn any long-established administrative practice. In attributing such an effect to the decision, the Petitioner relies on these rulings:

I.T. 2676, XII-I C.B. 48, (1933). The language quoted by the Petitioner at page 10 merely requires that all income be included in the computation whether or not taxed by the foreign country, but it does not say that computations such as the amount and timing of income, depreciation, inventories, etc. are to be taken into account as if U.S. rules applied; in fact the ruling talks about the "distributable income or surplus" of the foreign corporation, and suggests, if anything, a corporate surplus such as British accountants would determine. The ruling clearly fails to establish a practice of applying U.S. tax principles.

Rev. Rul. 63-6, 1963-1 C.B. 126. This ruling does indeed assert that U.S. rules should govern the determination of "accumulated profits." But the Petitioner fails to note that in 1972 the Commissioner announced that this ruling was now obsolete. Rev. Rul. 72-621, 1972-2 C.B. 651.

Rev. Rul. 87-72, 1987-2 C.B. 170. This ruling relates to *Champion International.* It partially withdrew the acquiescence in that case. The *Champion International* case essentially supports Respondent's argument. In 1984 the Commissioner had announced his general acquiescence in *Champion International.* But in September 1985 Respondent filed the present action in the Claims Court, and in April 1987 it filed its Motion for Summary Judgment. Then on August 3, 1987 the Commissioner issued Rev. Rul. 87-72, which appears to be an attempt to limit his acquiescence in *Champion International* so as to leave room for his contrary

position in the present case. This action by the Commissioner merely confirms the fact that the *Champion International* case really supports Respondent.

Rev. Rul. 87-14, 1987-1 C.B. 181. This ruling is similarly self serving.

One point does seem clear: the Commissioner's position when he withdrew his 1963 ruling and when he acquiesced in the *Champion International* case was contrary to his later position when he issued Rev. Rul. 87-72 and withdrew that acquiescence.

Although Petitioner asserts that the Commissioner's position is fifty years old, the whole concept of sourcing was not established until the *General Foods* case in 1947. The language of the Regulations under section 902 on which the Petitioner relies so heavily was not a part of the Regulations until 1965. Furthermore, the Petitioner's quotation (Pet. at p. 10) from Treasury Regulation §1.902-3(c) is not quite complete. The omitted portion goes on to say:

> Since . . . the *accumulated profits,* determined in accordance with subparagraph (1) of this paragraph, for the taxable year *are always equal to the total amount of the gains, profits, and income* for such year, the foreign income taxes imposed on or with respect to such accumulated profits shall be the entire amount of the foreign income taxes paid or accrued for such year on or with respect to such gains, profits, and income. Treas. Reg. §1.902-3(c)(4) [Emphasis supplied].

Thus in 1965, only five years before the first dividend involved in the present case, a new Regulation essentially supported the Respondent's position. This language, moreover, still appears in the Regulation. This is hardly fifty years of consistency.

Finally, perhaps it is not unfair to point out that in the present case a similar net operating loss of the very same British subsidiary for 1972 was allowed by the Internal Revenue Service in computing the Respondent's foreign tax credit in this case.

3. The decisions of this Court cited by Petitioner have no relevance whatever to the present controversy.

American Chicle Co. v. United States, 316 U.S. 450 (1942), interpreted the language of section 131 of the Revenue Acts of 1938 and 1939, a predecessor of section 902, with respect to a different question. Section 131 used a formula similar to that in the present case. The dispute, however, was as to T in the formula. The taxpayer argued that the tax in the formula represented the total tax imposed on the subsidiary's total profit (before tax) for the year. The government asserted the tax in the formula should be only the tax attributable to the subsidiary's after-tax profit (that is, total tax multiplied by after-tax profit divided by profit before tax). This Court held for the government, overruling several conflicting decisions.

The effect of this decision was to prevent the domestic parent from ever recovering as a credit the portion of the tax imposed on the profit used to pay the tax. After considerable subsequent debate, section 902 was amended in 1962 to allow the larger credit, contrary to this Court's opinion, but at the same time to require that the dividend to the parent be increased by the "tax deemed paid" (the process known as grossing-up).

The *American Chicle* case did not involve any dispute as to the meaning of "accumulated profits;" the decision in no way controls the present case. It is

interesting to note, however, that the opinion did say, referring to the faults of a still earlier version of the statute:

> Thus, if dividends were paid out of surplus earned in prior years, and it happened that the subsidiary paid no tax to the foreign country in the taxable year in question, the parent could claim no credit whatever. There were other eccentric results flowing from the provision of the Act of 1918. 316 U.S. at 453.

And that, in fact, is the "eccentric result" the Petitioner seeks in the present case.

Biddle v. Commissioner, 302 U.S. 573 (1938), relates to the *direct* tax credit which could be claimed by an individual shareholder of a foreign corporation. It did not involve the credit for taxes *deemed paid* at all, nor did it involve the income of the foreign corporation.

4. This case was rightly decided by the Court of Appeals. The Petitioner has derided the decision below as consisting of "little more than perfunctory analysis" departing from "the well-established interpretation" by the Commissioner "in a remarkably casual fashion." Pet. at 9 & 12. This *ad hominem* criticism is quite unjustified. The case for the Petitoner was ably briefed and ably defended in oral argument. The decision of the three judge panel was unanimous and was expressed in an opinion obviously well researched and well thought out. It was considered again on a motion for rehearing, which was denied, and again on a suggestion for rehearing before the entire Court of Appeals, which was declined with one dissent.

And even the trial court, which held for the Petitioner, said:

> *The court does not hold, however, that accumulated profit is in all cases equivalent to United States earnings and profits* and should be computed exactly

> as if the foreign subsidiary were itself a domestic corporation. Such a conclusion must be arrived at independently on a case by case basis given the complexities inherent in the applicable code provisions and in order to reach the underlying purposes Congress had in mind when enacting the indirect tax credit legislation. Pet. App. at p. 19a [Emphasis supplied].

And the same trial court went on to say:

> The relation of "gains, profits and income" to foreign income taxes indicates this *tax concept is to be equated with foreign taxable income.* "Earnings and profits," on the other hand, appear in this instance to refer to income which would be subject to United States tax. *Cf. Champion Int'l*, 81 T.C. at 447. Pet. App. at p. 26a [Emphasis supplied].

If it is correct, as the Claims Court said above, that "gains, profits and income" equals foreign taxable income; and if it is correct, as Treasury Regulation §1.902-3(c)(4) says, that "accumulated profits" equals "gains, profits and income," then it must necessarily follow that "accumulated profits" refers to foreign taxable income.

If this conclusion is as clear as it appears to be, how do we account for the result the Claims Court reached? The answer is plain. The Claims Court's decision is based on at least two erroneous assumptions:

> (a) That the Respondent was claiming credit for British tax for the year 1971, which had already been refunded (a "windfall" (Pet. App. at p. 24a), "phantom taxes" (Pet. App. at p. 24a), an "indirect tax credit for taxes its foreign subsidiary did not in fact pay" (Pet. App. at p. 28a)). To the contrary, the claimed credit was for 1968, 1969 and 1970 taxes which had not been refunded.

(b) That the parties agreed that "United States tax law governs the definition of the numerator" in the formula (Pet. App. at p. 20a). They do not so agree, and, because the amount of the dividend allocable to any year is limited to the "accumulated profits" for that year, that is another way of putting the issue in this case.

CONCLUSION

The dispute concerning this esoteric corner of the tax law has been pending since 1975. The Petitioner has had its day in court. Respondent respectfully requests this Court to deny the Petition for a Writ of Certiorari.

April 1989

Respectfully submitted,

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APPENDIX

The Internal Revenue Code of 1954, as in effect for the years 1970 and 1971, provided in pertinent part:

§904 Limitation on Credit

(a) ALTERNATIVE LIMITATIONS.—

(1) PER-COUNTRY LIMITATION.—In the case of any taxpayer who does not elect the limitation provided by paragraph (2), the amount of the credit in respect of the tax paid or accrued to any foreign country or possession of the United States shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's taxable income from sources within such country or possession (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year.

(2) OVERALL LIMITATION.—In the case of any taxpayer who elects the limitation provided by this paragraph, the total amount of the credit in respect of taxes paid or accrued to all foreign countries and possessions of the United States shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's taxable income from sources without the United States (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year.

§905 Applicable Rules

* * * * *

(c) ADJUSTMENTS ON PAYMENT OF ACCRUED TAXES.—If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer, or if any tax paid is refunded in whole or in part, the taxpayer shall notify the Secretary or his delegate, who shall redetermine the amount of the tax for the year or years affected. The amount of tax due on such redetermination, if any, shall be paid by the taxpayer on notice and demand by the Secretary or his delegate, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with subchapter B of chapter 66 (sec, 6511 and following). . . .

The Treasury Regulations, as in effect in 1970 and 1971, provided in pertinent part:

§1.902-3 Credit for domestic corporate shareholder of a foreign corporation (after amendment by Revenue Act of 1962).—

* * * * *

(c) Determination of accumulated profits and taxes paid on or with respect thereto.—

* * * * *

(4) Taxes paid on or with respect to accumulated profits of a foreign corporation. For purposes of this section, the amount of foreign income taxes paid or accrued on or with respect to the accumulated profits of a first-tier corporation or second-tier corporation, as the case may be, for any taxable year shall be so much of the foreign income taxes for such year as is properly attributable to such accumulated profits. For such purpose, the foreign income taxes which are properly attributable to the accumulated profits for any taxable year shall be the same proportion of the foreign income taxes imposed on or with respect to the gains, profits, and income for the taxable year as the accumulated profits, as determined under the applicable provision of this paragraph, bear to the total amount of such gains, profits, and income. Since, in applying the preceding sentence to a first-tier corporation which is not a less developed country corporation for the taxable year (and to a second-tier corporation to which subparagraph (3)(i) of this paragraph applies), the accumulated profits, determined in accordance with subparagraph (1) of this paragraph, for the taxable year are always equal to the total amount of the gains, profits, and income for such

year, the foreign income taxes imposed on or with respect to such accumulated profits shall be the entire amount of the foreign income taxes paid or accrued for such year on or with respect to such gains, profits, and income. For purposes of this subparagraph, the gains, profits, and income of a foreign corporation for any taxable year shall be determined after reduction by any income, war profits, or excess profits taxes imposed on or with respect to such gains, profits, and income by the United States.

[Petitioner's Calculation of the Foreign Tax Deemed Paid as Stipulated in the Federal Circuit Proceeding]

Exhibit J (Revised)

COMPUTATION OF BRITISH TAX DEEMED PAID
USING UNITED STATES TAX CONCEPTS
(IN POUNDS STERLING)

	1970	*1971*	*1973*
Profit before Tax and Before 1973 loss (Exs. M thru R)	3,646,611	1,648,254	(3,375,375)
Adjustment to U.S. concepts (Stip. 8)	156,941	1,550,143	4,451,460
Deduction of 1973 loss	-0-	-0-	-0-
Agreed IRS adjustment (Stip. 8)	8,921	26,089	61,067
Profit after losses and before tax (Stip. 7)	3,812,473	3,224,486	1,137,152
Deduction of Irish tax (Stip. 8)		(52,567)	
Deduction of UK tax (Stip. 15 and 19)	(758,437)	-0-	-0-
Adjusted accumulated profit	3,054,036	3,171,919	1,137,152
Dividends received by parent			
Cash	937,600	703,200	879,000
Per agreed IRS adjustment	8,921	26,089	61,067
Total Dividends for year	946,521	729,289	940,067
Allocation of Dividends			
To 1968			
To 1969			
To 1970	946,421		
To 1971		729,289	
To 1973			940,067
	235,038		
		12,086	

$$\frac{\text{Dividends}}{\text{Accumulated Profit After Taxes}} \times \text{Taxes Paid} = \text{Section 902 credit (Sec. 78 income)}$$

1970: $\frac{946,521}{3,054,036} \times 758,437 = 235,038$ 1971 $\frac{729,289}{3,171,919} \times 52,567 = 12,086$

[Respondent's Calculation of the Foreign Tax Deemed Paid as Stipulated in the Federal Circuit Proceeding]

Exhibit I (Revised)

COMPUTATION OF BRITISH TAX DEEMED PAID USING BRITISH TAX CONCEPTS (IN POUNDS STERLING)

	1968	*1969*	*1970*	*1971*	*1973*
Profit before tax and before carry-back of 1973 loss (Ex. M thru R)	3,947,459	1,932,178	3,646,611	1,648,254	(3,375,375)
Adjustment to U.S. concepts	-0-	-0-	-0-	-0-	-0-
Deduction of 1973 loss carry-back (Stip. 8)	-0-	-0-	(1,779,688)	(1,595,687)	-0-
Deduction of Irish tax (Stip. 8)	-0-	-0-	-0-	(52,567)	
Profit after all losses before tax (Stip. 6)	3,947,459	1,932,178	1,866,923	-0-	
Agreed IRS adjustment (Stip. 8)			8,921	26,089	61,067
UK tax (net) (Stip. 15)	(1,752,096)	(833,251)	(758,437)	-0-	-0-
Adjusted accumulated profit	2,195,363	1,098,927	1,117,407	26,089	61,067
Dividends received by parent					
Cash	937,600	937,600	937,600	703,200	879,000
Per agreed IRS adjustment	-0-	-0-	8,921	26,089	61,067
Total Dividends for year	937,600	937,600	946,521	729,289	940,067
Allocation of Dividends					
To 1968	937,600			370,987	879,000
To 1969		937,600		161,327	-0-
To 1970			946,521	170,886	-0-
To 1971				26,089	-0-
To 1973					61,067
Dividends x Tax Divided by Profit (for 1970 and 1971)					
1970: Paid out of 1970: 946,521 x 758,437 Divided by 1,117,407=			642,449		
1971: Paid out of 1968: 370,987 x 1,752,096 Divided by 2,195,363=				296,081	
Paid out of 1969: 161,327 x 833,251 Divided by 1,098,927=				122,325	
Paid out of 1970: 170,886 x 758,437 Divided by 1,117,407=				115,988	
Paid out of 1971: 26,089 x 52,567 Divided by 26,089=				52,567	
Tax deemed paid			642,449	586,961	